

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



July 22, 2003

Agenda ID #2501

TO: PARTIES OF RECORD IN APPLICATION 99-12-024

This is the draft decision of Administrative Law Judge McKenzie. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

Angela K. Minkin, Chief
Administrative Law Judge

ANG: avs

Decision **DRAFT DECISION OF ALJ McKENZIE** (Mailed 7/22/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Edison Company (U 338 E) for Authority to Value its Hydroelectric Generation Assets and for Authority to Retain Its Hydroelectric Generation Asserts in a Regulated Utility Corporation.

Application 99-12-024
(Filed December 15, 1999)

DECISION GRANTING PETITION TO WITHDRAW APPLICATION

This decision grants the petition of Southern California Edison Company (Edison or SCE), to withdraw the subject application. SCE filed this application in compliance with provisions in § 377 of the Public Utilities Code (Code) that have since been repealed or amended. Parties who participated in hearings in this proceeding, and who gave timely notice of their intent to seek compensation for their work, are eligible for an award of compensation upon making an appropriate showing.

We also respond to Notices of Intent to Claim Compensation (NOIs) filed by The Utility Reform Network (TURN), the California Hydropower Reform Coalition (CHRC), and Aglet Consumer Alliance (Aglet).

SCE's Petition to Withdraw Application

SCE filed this application in compliance with § 377, which was added to the Code in 1996 by Assembly Bill (AB) 1890, the principal piece of electric

restructuring legislation.¹ As originally enacted, § 377 provided that the Commission would continue to regulate a utility's nonnuclear generating assets until those assets had been subjected to a market valuation, and also set forth a procedure for dealing with the assets after the market valuation had taken place. At the time of its enactment, § 377 provided:

“The Commission shall continue to regulate the nonnuclear generation assets owned by any public utility prior to January 1, 1997, that are subject to commission regulation until those assets have been subject to market valuation in accordance with procedures established by the commission. If, after market valuation, the public utility wishes to retain ownership of nonnuclear generation assets in the same corporation as the distribution utility, the public utility shall demonstrate to the satisfaction of the commission, through a public hearing, that it would be consistent with the public interest and would not confer undue competitive advantage on the public utility to retain that ownership in the same corporation as the distribution utility.”

In the petition to withdraw, Edison gives the following description of its proposal for holding its hydroelectric assets after the necessary market valuation had taken place:

“A.99-12-024 proposed to value SCE hydroelectric assets at about \$993 million and sought authority to retain those assets within the regulated utility . . . A.99-12-024 proposed that SCE would sell electricity generated by the hydroelectric assets into the now dissolved California Power Exchange or other wholesale electric markets. Revenues from the sale of electricity would be applied first to allow SCE to recover its expenses under a type of performance based ratemaking mechanism. A 90/10 revenue sharing arrangement was proposed to operate if actual receipts from market sales

¹ Stats. 1996, Chapter 854, effective September 24, 1996.

exceeded or fell short of the authorized revenue requirement.”
(Petition to Withdraw, pp. 2-3.)

As part of the application, Edison filed a Memorandum of Understanding (MOU) signed by many interested parties that set forth how Edison would operate its hydro system after the Commission had established its value.

The Commission held prehearing conferences (PHCs) on February 22, and September 6, 2000, and subsequently held evidentiary hearings on four days between September 11 and 15, 2000. The Commission intended to hold a second set of hearings following the Commission’s environmental review of SCE’s proposal. However, before the Commission issued any environmental report, the state legislature enacted ABx1 6, which the Governor signed on January 18, 2001. ABx1 6 amended § 377 of the Code to require Commission approval prior to a utility’s sale of a generation facility, and also prohibited any such sale prior to January 1, 2006. Accordingly, SCE no longer requires a Commission finding that retaining its hydro facilities is in the public interest, nor is it necessary for the Commission to set a market value for the property. The Commission in Decision 01-11-012 has already dismissed a similar application filed by SCE that concerns other electric plant.

No party has protested SCE’s petition to withdraw its application. Aglet and TURN, however, filed responses to the petition that addressed issues related to intervenor compensation. TURN comments that the Commission has recognized in other proceedings that intervenor compensation may be appropriate even where intervening events have rendered an issue or docket moot.

We agree with SCE that the issues for resolution in the instant application have been addressed by legislation since the application was filed. The issues are

therefore moot and it is appropriate to grant SCE's petition to withdraw the application and close the proceeding. We also recognize, however, that intervenors may have a reasonable argument for receiving intervenor compensation. Accordingly, we find that the intervenors may still file requests for compensation even though the Commission will not be resolving the original issues presented in this application.

TURN's NOI

TURN originally filed an NOI on March 2, 2000. A ruling by the then - assigned Administrative Law Judge found that TURN had failed to demonstrate its status as a customer, as defined by Section 1802(b) of the code, and needed to provide more information regarding its expected costs of participation. TURN then filed an amended NOI that provided the requested information.

TURN's amended NOI provides a description of its expected contributions to the proceeding, consistent with Code Section 1804(a)(2)(A)(i). It also provides an itemized estimate of TURN's expected costs, as required by Section 1804(a)(2)(A)(ii). Finally, the amended NOI reasonably demonstrates that TURN's participation would pose a significant financial hardship on it, as required by Section 1804(a)(2)(B). TURN has been found eligible for compensation in several other dockets since the filing of the amended NOI in this proceeding.

Aglet's NOI

Aglet filed an NOI on September 25, 2000. Aglet's NOI demonstrates that it is a nonprofit organization incorporated to represent the interests of SCE's consumers. The NOI provides a description of Aglet's expected contributions to the proceeding, consistent with Section 1804(a)(2)(A)(i). The NOI also provides

an itemized estimate of Aglet's expected costs, as required by Section 1804(a)(2)(A)(ii). Finally, the NOI reasonably demonstrates that Aglet's participation would pose a significant financial hardship on it, as required by Section 1804(a)(2)(B). In Application (A.) 99-03-001, Aglet was found eligible for compensation within a year of the commencement of this proceeding, which creates a rebuttable presumption of its eligibility for compensation here.

California Hydropower Reform Coalition's NOI

CHRC filed an NOI on March 22, 2000. CHRC states it represents voting and non-voting members of several nonprofit membership corporations, including Friends of the River, Natural Heritage Institute, American Rivers, Planning and Conservation League and Trout Unlimited. CHRC states that more than 10,000 of these members are customers of SCE, and that CHRC is authorized to represent their interests in the future ownership and management of SCE's hydro plants. CHRC has provided an adequate showing that it represents customers as defined by Section 1802(b).

CHRC has also provided a description of its expected contributions to the proceeding (as required by Section 1804(a)(2)(A)(i)), as well as an itemized estimate of its expected costs as required by Section 1804(a)(2)(A)(ii).

CHRC states that three of its members, Friends of the River, American Whitewater, American Rivers and Foothills Conservancy, received a finding of significant financial hardship in a ruling issued in A.98-05-022, thus creating a rebuttable presumption in favor of CHRC's eligibility in this proceeding. However, we cannot find based on this that CHRC has made a showing of significant financial hardship. CHRC must make such a showing on behalf of its entire membership, and cannot rely on a finding that applied to only three of its many constituent groups. Section 1804(a)(2)(B) of the Code permits an

intervenor to make a showing of significant financial hardship either in its NOI or in its request for compensation. CHRC should take advantage of that opportunity if it chooses to file a request for compensation.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____.

Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and A. Kirk McKenzie is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SCE filed this application pursuant to Section 377 as enacted in 1996. SBx16 subsequently amended Section 377 in ways that render this application moot.
2. Several parties filed timely NOIs seeking a Commission finding that the party's work in this proceeding may qualify for intervenor compensation.
3. TURN has demonstrated that it is eligible to seek compensation in this proceeding.
4. Aglet has demonstrated that it is eligible to seek compensation in this proceeding.
5. CHRC has satisfied all of the statutory requirements for eligibility to seek compensation in this proceeding except the requirement that it demonstrate that its participation would cause significant financial hardship for it. CHRC may make this showing in any request for compensation that it eventually files in connection with this proceeding.

Conclusions of Law

1. This proceeding should be closed.
2. The Commission has discretion to grant compensation to a party that has participated in a proceeding, even though, because of mootness, the Commission does not ultimately resolve the issues presented by the proceeding.

O R D E R

IT IS ORDERED that this proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.